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IN REPLY PLEASE REFER
TO FILE NO.: 9247.001

August 30, 2010

Via E-Mail Only, to: cora.iori@epamail.epa.gov

Lori Houck Cora
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10, ORC-158
Seattle, WA 98101

Re: Portland Harbor Superfund Site: Linnton Plywood Association ("LPA")
FRE 408 Confidential Settlement Communication

Dear Ms. Houck Cora:

This letter responds to yours of August 9, 2010, addressed to attorney William P. Hutchison. Because of the insurance coverage issues implicated by EPA's response to LPA's June 4, 2010 settlement offer, LPA's reply is being communicated by me as coverage counsel for LPA; I can freely address the insurance coverage aspects of a negotiated resolution between LPA and EPA. The intended purpose of this letter is to provide EPA the comprehensive settlement proposal requested in your August 9, 2010 letter; more specifically, the following proposal offers terms concerning proceeds from the anticipated sale of LPA's real property, *and* the proceeds of LPA's insurance coverage.

As the parties have discussed at length, LPA's circumstances are such that the terms of resolution of EPA's claims against LPA (as well as claims asserted against LPA by the Lower Willamette Group ("LWG"), the Natural Resource Trustee Council ("NRTC"), and the Oregon Division of State Lands ("DSL")) are driven by LPA's ability to pay. In that vein, please rest assured that LPA is doing its level best to bring all its limited resources to bear to resolve these claims. LPA's proposal is as follows:

LPA's Real Property Sale

The Letter of Intent recently signed by LPA and its prospective purchaser, Wildlands, Inc., contains the following material terms:

- The contemplated transaction is grounded in purchaser's acquisition of the entire 25+/- acres and its intended restoration project that would pertain to at least a portion of the property; it is expected that this project would generate DSAY (Discounted Service Acre Year) credits available for purchase by Portland Harbor Superfund Site PRPs to mitigate their contribution to Natural Resource Damages;
- The intended base purchase price at closing is \$4 million; the additional deferred purchase price component would not be less than \$1 million or more than \$2 million; of that amount, \$500 thousand is due when EPA issues its ROD and another \$500 thousand is due 4 years after closing; any additional DSAY sale proceeds (up to the maximum) would be paid in periodic installments with funds generated from the anticipated DSAY sales; the total purchase price would not be less than \$5 million or more than \$6 million with all amounts over \$4 million payable on a deferred basis, though a "due on sale" clause will also be included; and,
- The transaction is subject to substantial contingencies and will not close for at least one year. Contingencies include resolution of all of LPA's environmental liabilities (primarily relating to claims asserted by EPA, the NRTC, and DSL) and EPA extending *bona fide* prospective purchaser protection; purchase is accorded a feasibility determination which is expected to be made within 6 months of the execution of the Purchase and Sale Agreement which is scheduled for completion within 30 days from August 16th; the contingencies also include regulatory approval of purchaser's proposed restoration project.

As I believe you know, it has been exceedingly difficult for LPA to find a purchaser for its property. As a result of the diligent work of LPA and its counsel, LPA has negotiated a Letter of Intent with Wildlands, Inc. on the best terms available. Nevertheless, the projected proceeds expected to be generated if this transaction closes will be insufficient to fund any portion of this proposed ability to pay settlement. EPA has previously analyzed this in the context of an anticipated transaction for a larger amount and concurred with this conclusion. Since that time, LPA's deferred liabilities have increased so there are fewer net proceeds available from this lower sale price. I refer you to that previous analysis and the details of LPA's obligation to its members under a court approved settlement. The sale price negotiated simply does not yield an ability to pay any of the sale proceeds.

LPA's Insurance Coverage

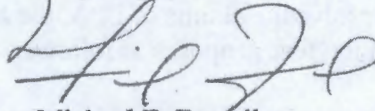
As we have discussed, LPA was insured at times relevant to the Portland Harbor claims by Liberty Mutual Insurance Company (or its predecessors in interest). The total policy limits implicated by these claims are approximately \$1.9 million. Liberty Mutual has lately disputed that these limits are payable as indemnity to LPA for any liability it may have to EPA or other claimants in the Portland Harbor matter, though it has offered, as you know, to pay \$500,000. LPA's ability to pay to resolve the claims of EPA, the NRTC, and DSL lies exclusively in its insurance coverage and therefore proposes as follows:

- That a Consent Decree be filed in which the claims against LPA by EPA, the NRTC, and DSL are fully and finally resolved in exchange for payment of any and all proceeds of insurance coverage litigation against Liberty Mutual. The coverage litigation could proceed through creation of an insurance trust with EPA and possibly others as trust beneficiaries, or it could proceed in the name of LPA together with a security interest in the action's proceeds in favor of EPA and possibly others. The parties would agree to cooperate in identifying the means best designed to achieve the desired result consistent with the law applicable to enforcement of the Liberty Mutual policies. The proceeds of the coverage litigation, if and when realized, would be paid over to EPA, the NRTC, and/or DSL in whatever shares they may among themselves agree.
- Either the trustee of the trust or LPA would engage counsel to prosecute the coverage action on terms agreed upon between client and counsel. LPA would agree to reasonably cooperate in prosecution of the action, while EPA, the NRTC, and/or DSL would have the right to approve the terms of any settlement with Liberty Mutual. Except as necessary to secure the viability of the coverage claims, LPA would agree to relinquish any interest in the proceeds of the action and would further agree to make no future claims to coverage under the policies.
- Because LPA proposes to settle for the full amount of its available insurance, any negotiated resolution must necessarily resolve all outstanding claims, including the claims of EPA, the NRTC, and DSL. The Consent Decree would of course bar contribution claims as well against LPA by other parties involved in the Portland Harbor matter, and include claimants' covenants not to sue.
- LPA understands and acknowledges that resolution on these points is conditioned upon the negotiation and execution of formal settlement documents.

Lori Houck Cora
U.S. Environmental Protection Agency
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As requested by EPA, this offer encompasses LPA's proposal as to what it is able to contribute towards the Portland Harbor cleanup given what limited resources it has and the other significant liabilities or creditors it must pay. We sincerely hope the proposal is favorably received and that the parties can proceed to formally document it and move the matter to final resolution.

Very truly yours,



Michael E. Farnell

MEF/kak

cc: *(Via E-Mail Only)*

William P. Hutchison (hutch@robertskaplan.com)

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